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INFO RUEHDS/AMEMBASSY ADDIS ABABA PRIORITY 8988  
RUEHDR/AMEMBASSY DAR ES SALAAM PRIORITY 5001  
RUEHDJ/AMEMBASSY DJIBOUTI PRIORITY 4474  
RUEHKM/AMEMBASSY KAMPALA PRIORITY 1729  
RUEHLO/AMEMBASSY LONDON PRIORITY 2087  
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C O N F I D E N T I A L NAIROBI 005207

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LONDON AND PARIS FOR AFRICA WATCHERS

E.O. 12958: DECL: 12/07/2026

TAGS: KDEM PGOV PREL KE

SUBJECT: KENYA'S ELECTORAL COMMISSION: DETERMINED BUT  
FACING ADVERSITY

REF: A. NAIROBI 3973

¶B. NAIROBI 5129

Classified By: Political Counselor Larry Andre for reasons 1.4 (b,d)

¶11. (C) SUMMARY: The Electoral Commission of Kenya is not

insulated from the rising political temperature in Kenya ahead of next year's general election. The Commission is feeling the heat too, Chairman Samuel Kivuitu told the Ambassador, describing how party politics and government machinations are threatening to undermine the organization. Documented evidence of serious misconduct by candidates and their supporters during July's by-election present the Commission with an opportunity to send a strong message on acceptable electoral behavior next year and reassert its independence. END SUMMARY.

¶12. (C) Electoral Commission of Kenya (ECK) Chairman Samuel Kivuitu is fighting hard to keep his organization and the running of Kenya's elections credible and independent. In a December 5 luncheon with the Ambassador, Kivuitu expressed his frustration with Kenyan politics, and the unfortunate extent to which it affects his Commission. With the terms of several commissioners expired and every indication that the government will hand pick replacements, Kivuitu is concerned about the continued strength of the Commission and its ability to run a transparent and competitive election next year (ref A).

IN KARUA'S CROSSHAIRS

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¶13. (C) Justice and Constitutional Affairs Minister Martha Karua is determined to water down the ECK, Kivuitu told the Ambassador. The strength of the Commission, since 1997, has been that its commissioners were evenly split among those appointed by the government, and those named by opposition parties. With the expiration earlier this year of the terms of several commissioners, the ECK is left with a 10-3 split in favor of the government, Kivuitu explained. Although President Kibaki had assured Kivuitu that opposition commissioners would be named, Karua convinced the President otherwise. Kivuitu had earlier described a "heated" exchange of letters on the subject of commissioners' appointments with Karua. He was not confident that there would be any opposition appointments.

ECK DE-FANGED

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¶4. (C) The ECK's current imbalance surfaced recently with respect to evidence, presented by the Kenya National Commission on Human Rights (KNCHR), of serious misconduct during July's by-elections. Although Kivuitu wanted to come out swinging - publicly naming the culprits as well as imposing fines (the extent of disciplinary measures the ECK can take within its mandate) - other commissioners refused. Instead, the ECK has only written letters to the politicians implicated. (NOTE: The Ambassador plans to join other concerned heads of mission in calling on the ECK to encourage the Commission to take action based on the facts presented. END NOTE.) Disappointed with some Commissioners' "cowardice," Kivuitu remarked "our teeth aren't dull, they've been pulled out."

PREY TO PARTY POLITICS

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¶5. (C) The Electoral Commission has also been dragged into the current leadership struggle within the KANU party (ref B). KANU members allege that the party's takeover by MP Nicholas Biwott was a government scheme to manipulate the Electoral Commission's composition. In their analysis, the government will ask the Biwott KANU to name new commissioners (who will actually be pro-government) and call them "opposition" selections. Kivuitu remarked to the Ambassador that he had no doubt the government was involved in the KANU coup. About a letter the ECK wrote to (former) KANU Chairman Uhuru Kenyatta recognizing the Biwott slate of officers, Kivuitu confirmed he had sent the message, but had done it to help Kenyatta. Kivuitu, who has no fondness for Biwott ("he should be in prison"), explained that he wanted to let

Kenyatta know the ECK had received a letter from the Biwott faction announcing their registration. Kivuitu added that he acted independently of the other Commissioners, alerting Kenyatta that formal notice from the Registrar would soon follow.

THE POT-HOLED ROAD TO 2007

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¶6. (C) Despite the significant hurdles placed before the ECK, the Commission is proceeding with preparations for the expected general election next year. Kivuitu has requested the government to invite international observers, such as the Carter Center, and is working with local civil society organizations to put in place a coordinated domestic observation program. Kivuitu had earlier explained to a USAID Officer that the Electoral Commission had conducted its mandated periodic review of constituency boundaries and recommended the addition of at least 50 new constituencies. The steps involved in effecting this recommendation are numerous; among them the constitution of Kenya must be amended to allow for more than the current 210, and voters who reside in a new constituency will have to re-register. Kivuitu confessed that when asked if he would simply give in and resign, part of him would like to walk away. However, after what he saw during the July by-elections ("the worst I've ever seen") he believes there is much more work to do.

¶7. (C) COMMENT: Kivuitu is a man in a tough spot: his attempts to do his job and fulfill the ECK's mandate are provoking resistance. The immediate challenge for Kivuitu is the ECK response to the overwhelming evidence of misconduct, on all sides, during the by-elections. If the ECK is unable to hold the culprits accountable, then an important check will disappear prior to next year's elections. The ECK knows what to do and has done it before - in 2002 and during the 2005 referendum - very successfully. Unless the dedicated Kivuitu is stymied, the Commission can repeat those performances next year. The Mission will continue to support the ECK through direct assistance and also by encouraging it to take a strong stand against those who seek to rollback Kenya's democratic gains.

¶8. (SBU) COMMENT CONTINUED: As agreed with other donors, the Mission is taking the lead coordinating electoral assistance.

This will give us important leverage and influence to help ensure a transparent, inclusive, and credible process. END COMMENT.

RANNEBERGER